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EXAMINER

MEINECKE DIAZ, SUSANNA M

| ART UNIT | PAPER NUMBER |
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3623

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,465

Applicant(s)

PHILONENKO, LAURENT

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 12-17 and 30-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 18-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This non-final Office action is responsive to Applicant's election filed July 12, 2006. Group I (claims 1-11 and 18-29) has been elected without traverse. Consequently, non-elected claims 12-17 and 30-34 stand as withdrawn.

Claims 1-11 and 18-29 are presented for examination.

Priority

2. The validity of the claim of priority to application no. 09/127,284 as a continuation-in-part application is questioned since there is no common inventor. Grigory Shenkman is listed as the sole inventor of parent application no. 09/127,284 and Laurent Philonenko is listed as the sole inventor of the instant application.

Furthermore, the instantly claimed invention is not fully disclosed in the parent application; therefore, the currently presented claims will be granted a priority date of February 8, 2002 (i.e., the filing date of the instant application) for purposes of examination.

Claim Objections

3. Claim 27 is objected to because of the following informalities:

There is a verb missing in this claim (e.g., the client data *is* solicited).

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6-10, 18-22, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Iwamura (JP 10-51445 A). (A human-machine assisted translation, obtained from the web site of the Japanese Patent Office, has been provided. Meanwhile, the Examiner has requested a translation from a human translator.)

Iwamura discloses a quality of service (QoS) implementation system for client/agent communication sessions based on expectation of benefit to the session host comprising:

[Claim 1] a control node connected to the system for receiving a session request and for soliciting client data associated with a request (Detailed Description: ¶¶ 18 -- The user sends a QOS demand to the network);

a data storage system for storing client data (Abstract; ¶¶ 22; Detailed Description: ¶¶ 24-25 -- History data is stored. Furthermore, a user's conformance with a traffic agreement is assessed, thereby implying that such a traffic agreement is stored for future reference);

a processor for comparing solicited client data to stored client data and for determining a quality of service option from more than one available option (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the

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demanded QOS is maintained and guaranteed. Otherwise, e.g., if the user has insufficient funds, the demanded QOS is not maintained and/or guaranteed); and

an option execution module for executing the selected quality of service option for application to the session (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the demanded QOS is maintained and guaranteed. Otherwise, e.g., if the user has insufficient funds, the demanded QOS is not maintained and/or guaranteed);

characterized in that upon receiving a session request at the control node, the control node solicits data from the request and accesses the data storage system to compare the solicited data with data stored therein and wherein depending on the results of data comparison, a QoS level appropriate to the criteria governing the comparison is selected and executed for application to the granted session (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the demanded QOS is maintained and guaranteed. Otherwise, e.g., if the user has insufficient funds, the demanded QOS is not maintained and/or guaranteed);

[Claim 2] wherein the session host is an entity maintaining one or more communication centers (Detailed Description: ¶ 18 -- The user sends a QOS demand to the network);

[Claim 3] wherein the expectation of benefit is profit based (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the demanded QOS is maintained and guaranteed. Otherwise, e.g., if the user has insufficient funds, the demanded QOS is not maintained and/or guaranteed. A person who has the funds

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to pay for services rendered and pays accordingly can be interpreted as being a more profitable customer than someone who does not have the funds to pay for services rendered and therefore cannot pay for such services);

[Claim 6] wherein the control node is a network server (Detailed Description: ¶ 18 -- The user sends a QOS demand to the network);

[Claim 7] wherein the data storage system is a customer resource management database maintained within the communication center subject to the requested session (Abstract; ¶ 22 -- "A QOS management station consisting of a hub and an exchange in a network sets QOS...the QOS management station is provided with a history management part consisting of a CPU, a RAM, a hard disk, etc..."; Detailed Description: ¶¶ 24-25 -- History data is stored. Furthermore, a user's conformance with a traffic agreement is assessed, thereby implying that such a traffic agreement is stored for future reference);

[Claim 8] wherein the data storage system is a customer resource management database maintained locally at the control node (Abstract; ¶ 22 -- "A QOS management station consisting of a hub and an exchange in a network sets QOS...the QOS management station is provided with a history management part consisting of a CPU, a RAM, a hard disk, etc..."; Detailed Description: ¶¶ 24-25 -- History data is stored. Furthermore, a user's conformance with a traffic agreement is assessed, thereby implying that such a traffic agreement is stored for future reference);

[Claim 9] wherein application to the session includes propagation of replacement quality of service criteria that takes priority over any existing quality of service already

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established in the path of communication between the client and the client's destination (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the demanded QOS is maintained and guaranteed. Otherwise, e.g., if the user has insufficient funds, the demanded QOS is not maintained and/or guaranteed. The network performs this evaluation and provides the appropriate QOS levels automatically. When a user's demanded QOS is not guaranteed, the user's demanded quality of service can be replaced, e.g., by a lower quality of service);

[Claim 10] wherein determination and execution of an appropriate quality of service option is automated (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the demanded QOS is maintained and guaranteed.

Otherwise, e.g., if the user has insufficient funds, the demanded QOS is not maintained and/or guaranteed. The network performs this evaluation and provides the appropriate QOS levels automatically).

[Claims 18-22, 27] Claims 18-22 and 27 recite limitations already addressed by the rejection of claims 1-3 and 6-10 above; therefore, the same rejection applies.

Furthermore, regarding claim 22, Iwamura discloses that, in step (a), the various quality of service options are associated with different levels of bandwidth to be made available for applicable sessions (Detailed Description: ¶¶ 17, 20; claim 5 -- The quality of service effectively refers to a transmission capacity, i.e., bandwidth).

As per claim 27, Iwamura discloses that, in step (d), the client data is solicited dynamically through an automated system (Abstract; ¶ 22; Detailed Description: ¶¶ 24-25 -- The user provides his/her data to the system as needed).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4, 5, 11, 23, 24, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwamura (JP 10-51445 A), as applied to claims 1, 18, and 27 above.

(A human-machine assisted translation, obtained from the web site of the Japanese Patent Office, has been provided. Meanwhile, the Examiner has requested a translation from a human translator.)

[Claim 4] Iwamura does not expressly teach that its control node is an Internet protocol router. Instead, Iwamura's control node operates using a B-ISDN protocol (Detailed Description: ¶ 2); however, Official Notice is taken that it is old and well-known in the art of communications to integrate a B-ISDN protocol with an Internet protocol. The use of the Internet facilitates more economical global communications. Since Iwamura's success relies on being able to reach customers who desire its broadband services, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Iwamura such that its control

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node includes an Internet protocol router in order to reap the benefits of more economical global communications, including access to a larger body of potential customers.

[Claim 5] Iwamura does not expressly teach that its control node is a network bridge. Instead, Iwamura's control node operates using a B-ISDN protocol (Detailed Description: ¶ 2); however, Official Notice is taken that it is old and well-known in the art of communications to utilize network bridges as an inexpensive and relatively easy way to connect local area network (LAN) segments. The modified version of Iwamura (addressed in claim 4) discusses an Internet-integrated version of Iwamura. A LAN is a more localized version, e.g., a subset, of the Internet that enables local users to share information amongst themselves and have greater control over who has access to this information. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Iwamura such that its control node includes a network bridge in order to facilitate an inexpensive and relatively easy way to connect local area network (LAN) segments, thereby attracting customers who prefer to share information amongst themselves and have greater control over who has access to this information.

[Claim 11] Iwamura does not expressly teach that the determination and execution of an appropriate quality of service option is manual. Instead, Iwamura discloses that the determination and execution of an appropriate quality of service option is automated (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the demanded QOS is maintained and guaranteed. Otherwise, e.g., if the user has

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insufficient funds, the demanded QOS is not maintained and/or guaranteed. The network performs this evaluation and provides the appropriate QOS levels automatically). However, Official Notice is taken that it is old and well-known in the art of automation to manually perform an activity that is typically automated. For example, when an automated system is down, it is often important for human users (when possible) to carry out the responsibilities of this automated system by hand in order to minimize inconvenience to customers. Similarly, the ability for a human user to manually override an automated function is important in scenarios where the automated functionality is improperly programmed or is not programmed to address special circumstances that are better appreciated by human reasoning. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Iwamura such that the determination and execution of an appropriate quality of service option may be performed manually in order to minimize inconvenience to customers when an automated system (that normally performs these functions) is down as well as to allow a human user to manually override an automated function in instances where the automated functionality is improperly programmed or is not programmed to address special circumstances that are better appreciated by human reasoning.

[Claim 28] Iwamura does not expressly teach that the automated system is an interactive voice response unit; however, Iwamura does receive a quality of service demand request from its users (Detailed Description: ¶¶24-26). Official Notice is taken that it is old and well-known in the art of service provider-customer interactions for a

service provider to accept service requests from a user via an interactive voice response unit. The use of an interactive voice response unit is commonly used to reduce the service provider's costs of employing additional human operators to interact with the customers. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Iwamura such that its automated system includes an interactive voice response unit in order to reduce Iwamura's costs of employing additional human operators to interact with its users.

[Claim 29] Iwamura does not expressly teach that the automated system is an electronic forms processor; however, Iwamura does receive a quality of service demand request from its users (Detailed Description: ¶¶24-26). Official Notice is taken that it is old and well-known in the art of service provider-customer interactions for a service provider to accept service requests from a user via an electronic forms processor. The use of an electronic forms processor is commonly used to reduce the service provider's costs of employing additional human operators to interact with the customers since an electronic forms processor processes user requests more efficiently, without requiring human intervention. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Iwamura such that its automated system includes an electronic forms processor in order to reduce Iwamura's costs of employing additional human operators to interact with its users since an electronic forms processor processes user requests more efficiently, without requiring human intervention.

[Claims 23-24] Claims 23-24 recite limitations already addressed by the rejection of claims 4-5 above; therefore, the same rejection applies.

8. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwamura (JP 10-51445 A), as applied to claim 18 above, in view of Yeh (U.S. Patent No. 6,690,929). (A human-machine assisted translation, obtained from the web site of the Japanese Patent Office, has been provided. Meanwhile, the Examiner has requested a translation from a human translator.)

[Claims 25, 26] Iwamura does not expressly teach that, in step (d), the client data comprises at least an identified phone number belonging to the client (claim 25); however, Yeh allows cell phone customers to negotiate access to greater or lesser bandwidth based on a willingness to pay the current asking price for the desired amount of bandwidth (col. 3, lines 29-40; col. 4, lines 28-43). In other words, priority is given to certain customers over others in an effort to increase the service provider's profit (which is also suggested in col. 1, lines 59-64 of Yeh). Furthermore, Official Notice is taken that it is old and well-known in the art of cellular phone service for a cellular phone service provider to identify its customers based on their respective cellular phone number(s). This facilitates record management since cellular phone numbers are identifiers that are unique to the customers using these cellular phone numbers. Since both Iwamura and Yeh are directed toward optimizing network resource allocation (e.g., of bandwidth) to customers who are willing to pay for priority service, the Examiner

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submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Iwamura such that, in step (d), the client data comprises at least an identified phone number belonging to the client in order to facilitate a more profitable allocation of cellular phone network bandwidth to its customers. Furthermore, by expanding Iwamura's concept of bandwidth allocation to the cellular phone area, Iwamura reaps the benefits of having access to a larger customer base (such as potential for increased profits).

Furthermore, as per claim 26, Iwamura does not expressly teach that, in step (d), the client data includes a promotional code or password. However, Yeh discloses that an in-call user may be given a "discount [that] can be applied to the quoted price versus a new user. In this way, the greater annoyance to the user from a dropped connection can be taken into account properly through a market mechanism, rather than through the potentially inefficient reservation mechanism." (Yeh: col. 6, lines 34-44). This practice is meant to improve customer satisfaction since Yeh admits that "annoyance to the user is greater for a dropped call than a blocked call." (col. 6, lines 34-36)

Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify the Iwamura-Yeh combination such that, in step (d), the client data includes a promotional code or password (as taught by Yeh, i.e., the discount) in order to encourage continued patronage from the cellular phone customers by minimizing customer annoyance due to dropped calls (as suggested by Yeh).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chase et al. (U.S. Patent No. 7,099,936) -- Discloses a multi-tier service level agreement method and system that managing resources in a profit-driven manner.

Krishnamurthy et al. (US 2001/0025310) -- Discloses a system for pricing-based quality of service (PQoS) control in a network.

Kung et al. (U.S. Patent No. 6,775,267) -- Discloses a method for billing IP broadband subscribers based on profit.

McDonough et al. (U.S. Patent No. 6,070,142) -- Discloses a virtual customer sales and service center and method that routes customers based on expected profit.

Bunting et al. (U.S. Patent No. 6,134,530) -- Discloses a rule based routing system and method for a virtual sales and service center that takes profit into account.

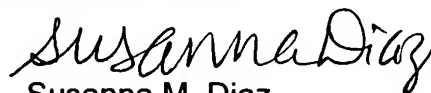
Reith et al. (US 2004/0102182) -- Discloses a method of providing network services in which profitable users may be upgraded to a better quality of service and less profitable users may be downgraded to a lower quality of service.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Susanna M. Diaz
Primary Examiner
Art Unit 3623

October 1, 2006